



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2015-0820]

RIN 1625-AA08

Special Local Regulation for Battle of Hampton; Hampton River, Hampton, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a special local regulation on the navigable waters of Hampton River, in the vicinity of the Crowne Plaza Hampton Marina in Hampton, Virginia. This regulated area will restrict vessel movement in the specified area during the revolutionary sea battle re-enactment Battle of Hampton. This action is necessary to provide for the safety of life and property on the surrounding navigable waters during the re-enactment.

**DATES:** This rule is effective from 1 p.m. on October 24 through 1:30 p.m. on October 25, 2015. This rule will only be enforced from 1:00 p.m. to 1:30 p.m. each day.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2015-0820 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LCDR Barbara Wilk, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; 757-668-5580, email HamptonRoadsWaterway@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule due to the short time period between event planners notifying the Coast Guard of details concerning the event, on August 15, 2015, and publication of this special local regulation. As such, it is impracticable for the Coast Guard to provide a full comment period due to lack of time. Furthermore, delaying the effective date of this special local regulation would be contrary to the public interest as immediate action is needed to ensure the safety of the event participants, patrol vessels, spectator craft and other vessels transiting the event area. The Coast Guard will provide advance notifications to users of the affected waterway via marine information broadcasts, local

notice to mariners. This same location is used for an annually occurring marine event, Blackbeard Festival, that is regulated under 33 CFR 100.501, Table to § 100.501, section (c) line 1, and includes sea battle re-enactments and fireworks. The organizers wanted to hold an additional revolutionary sea battle re-enactment closer to the anniversary date of the actual historical battle in Hampton, VA. This event will become an annual marine event and will be scheduled to occur on the second to last weekend in October.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction on vessel traffic is necessary to protect life, property, and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the special local regulation intended objectives of protecting persons and vessels, and enhancing public and maritime safety.

### **III. Legal Authority and Need for Rule**

On October 24 and October 25, 2015, the Hampton History Museum and City of Hampton Parks and Recreation will sponsor the “Battle of Hampton” on the waters of the Hampton River in Hampton, VA. The event will consist of approximately four time-period vessels carrying out a revolutionary sea battle re-enactment on the waters of the Hampton River. As part of the sea battle re-enactment, participants onboard the vessels will be firing off 18<sup>th</sup> century cannons and weapons aimed towards the shoreline. To provide for the safety of participants, spectators, support and transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event

area during the sea battle re-enactment. The regulation at 33 CFR 100.501 will be enforced for the duration of the event. Under the provisions of 33 CFR 100.501, from 1 p.m. through 1:30 p.m. on October 24 and October 25, 2015, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

This special local regulation will restrict vessel movement in the navigable waters of the Hampton River from hazards associated with battle re-enactments. The potential hazards to mariners within the special local regulation include accidental shockwaves, flying debris and loud noises.

#### **IV. Discussion of the Rule**

The Captain of the Port of Hampton Roads will establish a special local regulation on the waters of the Hampton River, near the Crowne Plaza Hampton Marina, bounded by the shoreline and a line drawn from 37° 01' 30.09"N / 076° 20' 25.44"W, to 37° 01' 29.47"N / 076° 20' 24.24"W, to 37° 01' 22.93"N / 076° 20' 30.62"W, to 37° 01' 24.47"N / 076° 20' 31.43"W (NAD 1983), in Hampton, Virginia. This regulation will be enforced on October 24 and October 25, 2015 between the hours of 1 p.m. and 1:30 p.m. Access to the regulated area will be restricted during the specified date and time.

Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area during the time frame listed. The COTP will give notice of the enforcement of the regulated area by all appropriate means to provide the widest dissemination of notice among the affected segments of the public. This will include publication in the Local Notice to Mariners and Marine Information Broadcasts.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

#### A. Regulatory Planning and Review

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the restricted area. Although this regulation restricts access to the regulated area, the effect of this rule will not be significant because: (i) this rule will only be enforced for the limited size and duration of the event; and (ii) the Coast Guard will make extensive notification to the maritime community via marine information broadcasts so mariners may adjust their plans accordingly.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small

entities.

This rule affects the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in waters of the Hampton River, during the enforcement period.

This regulated area will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) it will only be in effect for a limited duration, and (ii) before the enforcement period, Sector Hampton Roads will issue maritime advisories widely available to users of the Hampton River, allowing mariners to adjust their plans accordingly.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have

determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sailboat regattas, boat parades, power boat racing, swimming events, crew racing, canoe and sailboard racing. It is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 100**

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

#### **PART 100 – SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:



**Authority:** 33 U.S.C. 1233.

2. In § 100.501, in the Table to § 100.501, under “(c.) Coast Guard Sector Hampton Roads- COTP Zone,” add entry 10, effective from 1 p.m. on October 24 through 1:30 p.m. on October 25, 2015, to read as follows:

§ 100.501 Special Local Regulations; Marine Events in the Fifth Coast Guard District.

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**TABLE TO §100.501**

<b>No.</b>	<b>Date</b>	<b>Event</b>	<b>Sponsor</b>	<b>Location</b>
*	*	*	*	*
<b>(c.) Coast Guard Sector Hampton Roads - COTP Zone</b>				
*  10	*  October-second to last weekend.	*  Hampton Roads	*  Hampton History Museum and City of Hampton Parks and Recreation	*  Regulated area includes all waters of the Hampton River, near the Crowne Plaza Hampton Marina, bounded by the shoreline and a line drawn from 37° 01’ 30.09”N / 076° 20’ 25.44”W, to 37° 01’ 29.47”N / 076° 20’ 24.24”W, to 37° 01’ 22.93”N / 076°-20’-30.62”W, to 37° 01’ 24.47”N / 076° 20’ 31.43”W (NAD 1983), in Hampton, Virginia.
*	*	*	*	*

Dated: October 13, 2015

CHRISTOPHER S. KEANE

CAPTAIN, U.S. Coast Guard,

Captain of the Port Hampton Roads

[FR Doc. 2015-26962 Filed: 10/21/2015 08:45 am; Publication Date: 10/22/2015]